

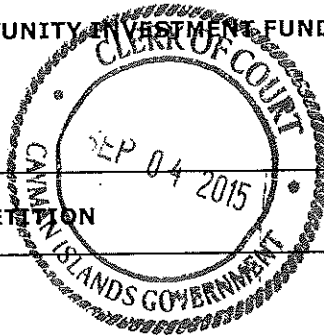
IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 0142 OF 2015

IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)

AND IN THE MATTER OF MUNSUN CHINA OPPORTUNITY INVESTMENT FUND



WINDING UP PETITION

To: The Grand Court

**THE HUMBLE PETITION** of Koo Yuen Kim, of Civil Science & Technology Park, Dongming North Road, Shiqi District, Zhongshan City, Guangdong Province, 528402, China, a shareholder of the above-named Munsun China Opportunity Investment Fund, shows as follows:

**A. THE COMPANY**

1. Munsun China Opportunity Investment Fund (**Opportunity Fund**) is an exempted company incorporated with limited liability on 4 August 2009 under and pursuant to the provisions of the Cayman Islands Companies Law, with registered number WK-229117.
2. The registered office of the Opportunity Fund is situated at Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9005, Cayman Islands.
3. The Amended and Restated Memorandum and Articles of Association, dated 26 December 2013, states that the objects of the Opportunity Fund are unrestricted.
4. The Opportunity Fund also issued an Offering Memorandum dated 14 January 2014, the relevant terms of which are referred to below.
5. The Opportunity Fund has an authorised share capital of US\$50,000 divided into 10 "Founder Shares" of US\$1.00 each and 49,990,000 ordinary Class A Ordinary Shares of US\$0.001 each. Under Article 12, the Founder Shares were issued at par value and carry the right to vote on all matters other than the dissolution of the company, but they confer no right to share in the company's profits or assets (save for the paid-up capital on such shares). The Class A Ordinary Shares do not generally confer a right to attend or vote at general meetings (save in respect of variations of rights of that class or the winding-up of the company), but they do confer rights to participate in the profits or assets of the company.

6. The rules governing the redemption of shares are set out at Articles 37 to 60 and are supplemented in the Offering Memorandum. Article 37 states:

*"Subject to the Law, these Articles any rights and restrictions for the time being attached to any Class or Series:*

- (a) *on receipt by the Company or its authorised agent of a Redemption Notice upon at least such number of days' prior notice in writing as the Directors may from time to time determine (subject to the discretion of the Directors to waive or reduce such period of notice) the Company shall redeem all or any portion of such Redeeming Shareholder's Ordinary Shares on a Redemption Day at the Redemption Price for the relevant Class and Series..."*
7. "Redemption Day" is defined in Article 1 as "such day or days as the Directors may from time to time determine". The Offering Memorandum provides that a Redemption Day is "each Valuation Day". "Valuation Day" is defined in the Offering Memorandum as "the last Business Day of each month, and/or such other Business Day as determined by the Directors".
8. The directors of the Opportunity Fund are Li Xianghong (**Li**), Ding Liqi (**Ding**) and Shen Yang-Pin. Li and Zhang Lirui (**Zhang**) are the co-founders of the Munsun investment group.
9. The Investment Manager of the Opportunity Fund is Munsun Asset Management (Asia) Limited (**HK Munsun**), by virtue of an Investment Management Agreement dated 26 December 2013. HK Munsun holds all of the Founder Shares.
10. To the best of Mr Koo's knowledge, the assets held by the Opportunity Fund as of 31 July 2015 were as follows:

Type of asset	Party holding asset	Value
Cash	Goldman Sachs (Asia) LLC	HK\$18,532,857.00
HK Listed Stock	Goldman Sachs (Asia) LLC	HK\$311,302,829.60
Cash	HSBC Institutional Trust Services (Asia) Limited	HK\$8,858,342.92
Cash	HSBC Institutional Trust Services (Asia) Limited	US\$22,528.79

**B. THE PETITIONER**

11. Mr Koo is a Malaysian Chinese resident in the People's Republic of China. He is the holder of 325,233.22 of 360,909.53 Class A Shares, comprising 90.11% of the total share capital of the Opportunity Fund.

**C. MR KOO'S INVESTMENT IN THE OPPORTUNITY FUND**

12. In or around October 2013, Zhang contacted Mr Koo on behalf of the Opportunity Fund and asked whether he was interested in investing on a short-term basis in the shares of a Hong Kong-listed company, China Taiping Insurance Holdings Company Limited (**Taiping**). Zhang said that he was confident that Taiping Shares would rise in the short term and assured Mr Koo that:
- 12.1 any money he invested would be used exclusively for the purpose of purchasing Taiping shares; and
- 12.2 any shares he purchased would be sold, and the proceeds returned to Mr Koo at or around the Chinese New Year (in late January/early February 2014).
13. Zhang further told Mr Koo that it would be more convenient if the investment were made through a fund, and suggested that this could be done through the Opportunity Fund and another fund with which he was involved, the Munsun Stable Growth Fund (**Stable Growth Fund**), which was a sub-trust of the Munsun Umbrella Trust.
14. On the basis of these representations, in October 2013 Mr Koo invested HK\$380 million into the Opportunity Fund for the exclusive purpose of investing in Taiping Shares.
15. In about December 2013, Mr Koo was asked by Li and Zhang to sign a written shareholder resolution prepared by them, which provided for the adoption of new Articles of Association and the replacement of the existing Investment Manager, Munsun Assets Management Limited (**Cayman Munsun**), with HK Munsun.

**D. MR KOO'S CLAIM AS A CREDITOR**

16. On 16 June 2015 Mr Koo issued a Redemption Request to the Opportunity Fund c/o HK Munsun and the Administrator's Delegate, HSBC Institutional Trust Services (Asia) Limited, seeking the redemption of all of his shares. This request was refused by email from Ding sent on 26 June 2015, but no proper basis was given for the refusal.
17. Pursuant to the provisions of the Memorandum and Articles of Association (as supplemented by the Offering Memorandum), the Redemption Day in respect of Mr Koo's Redemption Request was 30 June 2015, being the last Business Day of the month in which the request was made. As such, the redemption proceeds fell due thereafter pursuant to Articles 45 and 46.
18. The net asset value of shares in the Opportunity Fund as at 30 June 2015 was US\$131.77. The sum of US\$42,855,981.40 is therefore now due and owing to Mr Koo by the Opportunity Fund.

19. The Opportunity Fund has not paid the said sum or any part thereof and is therefore insolvent.

**E. CONDUCT OF THE INVESTMENT MANAGER**

20. Notwithstanding the very substantial investments he has made, it has become clear to Mr Koo that his investments in the Opportunity Fund have been mismanaged.

**(i) Failure to acquire Taiping Shares**

21. As mentioned above, in or around October 2013 Mr Koo made payments into the Opportunity Fund and the Stable Growth Fund for the exclusive purpose of acquiring shares in Taiping, which were to be sold by Chinese New Year 2014.
22. In or around January 2014, Mr Koo told Zhang he wanted to redeem his investments in the Opportunity Fund and the Stable Growth Fund. However, nothing was done. This worried Mr Koo as Taiping's shares had risen in the market and there was no reason why they could not simply be sold to repay the amount he had invested.
23. In early July 2014, at a meeting with Li and Zhang in Shenzhen, Mr Koo was told that of the HK\$380 million he had invested in the Opportunity Fund, only HK\$55 million had been invested in Taiping shares. Further, even after those shares had been sold at the end of November 2013, the funds were not paid out to Mr Koo as previously agreed but retained in the Opportunity Fund, and were thereafter used to buy shares in various other companies. In particular, Mr Koo discovered that HK\$140 million had been used to grant a loan to China Precious Metal Resources Holdings Co Ltd (**CPM**) on 31 December 2013, at interest of 9% per annum.

**(ii) Breaches of undertakings given in Investment Arrangement Notice**

24. Between approximately the end of 2012 and August 2013, the Investment Manager at the time, Cayman Munsun, used a total of HK\$107.44 million from three of the funds in which Mr Koo had invested (the Opportunity Fund, the Stable Growth Fund and the China High-End Equipment Investment Fund), of which HK\$16.98 million came from the Opportunity Fund, to purchase shares in Wison Engineering Services Co Ltd (**Wison**), a Hong Kong-listed company. (Of this HK\$16.98 million, HK\$12.74 million was from Mr Koo's investment in the fund.)
25. However, soon afterwards, on 2 September 2013, trading of Wison shares was suspended. By this time some of the shares purchased using cash from the Opportunity Fund had been sold, but 4.77 million were still held.
26. Mr Koo's frustration at this was compounded by actions of the Investment Manager in relation to other funds in which he had invested. This included the management of his substantial investment in the Munsun Financial Investment Fund LP (**Financial Fund**),

another Cayman fund of which Cayman Munsun, and later HK Munsun, was the General Partner and Investment Manager. Mr Koo's investment had been made upon an express direction to the General Partner that it be used to subscribe for the initial public offering of The People's Insurance Company (Group) of China Limited (**PICC**). Instead, the funds were used to grant a loan of HK\$313M to Cayman Munsun, which then lent that amount to another investor, Chen Guoying, for Chen Guoying to purchase PICC shares via the Financial Fund (**Chen Guoying Loan**). This took place in November 2012 without Mr Koo's knowledge or approval.

27. Upon becoming aware of this, Mr Koo immediately raised an objection with Li and Zhang and a meeting was held in Shenzhen to discuss the matter. He eventually agreed not to pursue the matter, but only upon the condition that Cayman Munsun and another member of the Munsun Group, Shenzhen City Munsun Asset Management Corporation Limited, would pay him the accrued interest Chen Guoying Loan (which currently amounts to approximately HK\$36.26M).

28. This agreement was reflected in the terms of an Investment Arrangement Notice dated 26 July 2014, issued by Li and Zhang (**Investment Arrangement Notice**), which also addressed the issues relating to the Wison shares. Among other things, the Investment Arrangement Notice stated that:

28.1 Cayman Munsun would compensate Mr Koo for his losses in respect of the Wison shares. In that regard:

28.1.1 Clause 1 stated:

*"Due to the funds that Mr Koo Yuen Kim invested holding shares under suspension from trading, the Company has, in the soonest period and by regulated means, arranged to sell the shares at a price not less than US\$6 million; if the value of such shares is over US\$6 million after the resumption of trading, the excess will be still vested in Mr Koo Yuen Kim".*

In other words, (a) the General Partner would ensure the sale of the remaining Wison shares for a total price of not less than US\$6 million upon the resumption of trading; (b) if, upon the resumption of trading, the value of the Wison shares was greater than US\$6 million, any surplus in the sale price above US\$6 million would still be paid to Mr Koo.

28.1.2 This commitment was reinforced by a WeChat message from Zhang to Mr Koo's personal assistant, Peng Zhihong (**Peng**) and later forwarded to Mr Koo, in which Zhang confirmed that:

*"It is hereby to clarify the treatment of USD6 million: payment of USD1 million to the relevant companies has no relationship with you; upon completion of this payment of USD2.5 million, payment of the remaining*

*USD3.5 million will be completed by other means by the end of March 2015 as agreed under the original undertaking letters [i.e., Investment Arrangement Notice] ... ”; and*

- 28.2 Li and Zhang would procure the payment to Mr Koo, on or before 31 March 2015, of an amount equivalent to the interest accrued on the Chen Guoying Loan.
29. However, despite these assurances, as of the date of this petition:
- 29.1 Although Mr Koo does not accept that he is only owed US\$3.5 million, to date the promised US\$3.5 million has still not been paid; and
- 29.2 No payment equivalent to the interest accrued on the Chen Guoying Loan has been received.

**(iii) Using misleading board resolutions to approve transactions of HK Munsun**

30. Mr Koo has obtained copies of:
- 30.1 a redemption form dated 14 June 2015, purportedly sent by Cayman Munsun in its capacity as a shareholder of the Opportunity Fund, to redeem 72,500.54 shares; and
- 30.2 purported minutes of a board meeting of HK Munsun dated 14 June 2015, stating that it had been resolved that the Redemption Request be approved and that the Opportunity Fund’s administrator be instructed to process the Redemption Request. The minutes also state that Pang Ka Keung (**Pang**), one of Mr Koo’s assistants and a director of HK Munsun, was present at the directors’ meeting.
31. Pang was not present at any such meeting. As such, the board minutes appear to be false. Further:
- 31.1 the form of the board minutes does not even contemplate signature by all of the directors;
- 31.2 the Redemption Request, while purportedly dated 14 June 2015, appears to have been altered – the original date of the request appears to be 19 June 2015;
- 31.3 Mr Koo filed a redemption notice for the Opportunity Fund on 16 June 2015, but HK Munsun has failed to process it, leading Mr Koo to conclude that upon receiving his redemption request, HK Munsun immediately filed a similar redemption notice in respect of Cayman Munsun and backdated it so as to make it appear as though Cayman Munsun’s Redemption Request was submitted earlier than Mr Koo’s;
- 31.4 payment on the Redemption Request was made to Cayman Munsun on 20 July 2015, while Mr Koo’s redemption request remains unsatisfied.

32. This appears not to have been an isolated incident. On or around 30 June 2015, Pang received from Linda Luo, a legal officer of the Munsun companies, a copy of minutes of a purported board meeting of HK Munsun on 29 June 2015, containing a resolution approving a Loan Agreement under which HK Munsun agreed to lend HK\$60,000,000 to CPM. Again, the minutes stated that Pang had attended the board meeting to approve the deal and were signed by the remaining four directors of HK Munsun. Yet Pang was aware of neither the meeting nor the loan purportedly approved at it.
33. Subsequently Pang was informed by Yan Le, an accounting officer of the Munsun group, that the money had in fact been wired to CPM before the alleged board meeting took place. Li and Zhang are directors of the beneficiary of the loan, CPM.
34. Notwithstanding that a Repayment Date of 31 July 2015 was specified in the Loan Agreement, as of the filing of this petition the loan has not been repaid.
35. Mr Koo has serious concerns about HK Munsun's management of the Opportunity Fund and worries that its directors have engaged (and may continue to engage) in improper conduct and preferred their own interests to those of the company as a whole.

**(iv) Failure to comply with Mr Koo's requests to exit the Opportunity Fund**

36. Given his loss of confidence in HK Munsun as a result of the events above, Mr Koo decided to withdraw his investment in the Opportunity Fund. As mentioned above, on 16 June 2015 he issued a Redemption Request to the Opportunity Fund c/o HK Munsun and the Administrator's Delegate, HSBC Institutional Trust Services (Asia) Limited, seeking the redemption of all of his shares. The redemption proceeds have not been paid.
37. This was despite the fund's approval around the same time of the redemption of Cayman Munsun's investment in the fund in the suspicious circumstances outlined above.

**F. GROUNDS FOR WINDING UP**

38. Opportunity Fund has failed to pay to Mr Koo the sum of US\$42,855,981.40 in respect of his redemption of shares on or before the Redemption Day of 30 June 2015, or since, and should be wound up under Section 92(d) of the Companies Act on the basis that it is unable to pay its debts.
39. Alternatively, in the circumstances, the board of directors has acted with a lack of probity and good faith and has improperly conducted itself and it is just and equitable to wind-up the Opportunity Fund under Section 92(e) of the Companies Act:
  - 39.1 Mr Koo's legitimate expectations as to the manner in which the business of the Opportunity Fund has been conducted have not been met;

- 39.2 Mr Koo has a justifiable lack of confidence in the management of the Opportunity Fund;
- 39.3 It has become impossible, or alternatively impractical, for the Opportunity Fund to carry on its business as an investment company and it has ceased to be viable; and/or
- 39.4 The affairs of the Opportunity Fund require investigation, which ought to be conducted by an official liquidator.
40. In the premises, Mr Koo seeks an order that the Opportunity Fund be wound up.

**G. NOMINATED INSOLVENCY PRACTITIONERS**


41. Mr Koo nominates Gordon Iain Macrae of Zolfo Cooper (Cayman) Limited, Suite 776, 10 Market Street, Camana Bay, Grand Cayman KY1-9006, Cayman Islands, and Gwynn Hopkins of Zolfo Cooper (Hong Kong), Suite 2806, 28/F, Tower 1, Lippo Centre, 89 Queensway, Admiralty, Hong Kong for appointment as joint official liquidators of the Opportunity Fund.

**YOUR PETITIONER THEREFORE HUMBLY PRAYS AS FOLLOWS:**

1. That the Opportunity Fund be wound up by the Court under the provisions of the Companies Law.
2. Gordon Iain Macrae of Zolfo Cooper (Cayman) Limited, Suite 776, 10 Market Street, Camana Bay, Grand Cayman KY1-9006, Cayman Islands, and Gwynn Hopkins of Zolfo Cooper (Hong Kong), Suite 2806, 28/F, Tower 1, Lippo Centre, 89 Queensway, Admiralty, Hong Kong, be appointed as joint official liquidators of the Opportunity Fund (**Liquidators**).
3. The Liquidators shall not be required to give security for their appointment.
4. The Liquidators be authorised to exercise any of the powers conferred on them by Section 110(2) and Parts I and II of the Third Schedule of the Companies Law without the further sanction or intervention of the Court.
5. The Liquidators be authorised to carry out any act or exercise any power considered by them to be necessary or desirable in connection with the liquidation of the Opportunity Fund and the winding-up of its affairs and to prevent the dissipation of the Opportunity Fund's assets.
6. No suit, action or other proceeding shall be proceeded with or commenced against the Opportunity Fund except with the leave of the Court and subject to such terms as the Court may impose.

7. No disposition of the Opportunity Fund's property by or with the authority of the Liquidators in carrying out their duties and functions and exercise of their powers under this Order shall be voided by virtue of Section 99 of the Companies Law.
8. The Liquidators shall be at liberty to appoint counsel, attorneys, and/or any other professional advisers, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit and to remunerate them out of the assets of the Opportunity Fund.
9. The Liquidators and their staff be remunerated out of the assets of the Opportunity Fund at the usual customary rate.
10. The Liquidators be at liberty to apply generally.
11. The costs of the Petition and the Petitioner be paid out of the assets of the Opportunity Fund as an expense of the liquidation.
12. Such further or other relief as to the Court seems appropriate.

Dated this 27<sup>th</sup> day of August 2015

  
**Appleby (Cayman) Ltd**  
**Attorneys-at-Law for the Petitioner**

**THIS PETITION** was filed by Appleby (Cayman) Ltd., Attorneys-at-Law for the Petitioner, whose address for service is Clifton House, 75 Fort Street, PO Box 190, KY1-1104, George Town, Grand Cayman, Cayman Islands. (Ref: THW/JHS/432497.0001)

**NOTICE OF HEARING**

**TAKE NOTICE THAT** the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman on the      day of                      at              am/pm.

Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, Cayman Islands, KY1-1106 telephone (+1 345) 949 4296.